

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

UNITED STATES of AMERICA and )  
*ex rel.* TRACY CONROY, )  
PAMELA SCHENK and LISA WILSON, )  
  )  
Plaintiffs/Relators,                )  
v.                                     ) CASE NO. 3:12-cv-00051-RLY-DML  
  )  
SELECT MEDICAL CORPORATION,      )  
SELECT SPECIALTY HOSPITAL -     )  
EVANSVILLE, and DR. RICHARD SLOAN, )  
  )  
Defendants.                        )

**NOTICE OF THE UNITED STATES OF ITS OPPOSITION TO DISMISSAL OF  
CERTAIN CLAIMS ON THE BASIS OF THE PUBLIC DISCLOSURE BAR**

Pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3730(e)(4)(A), the United States notifies the Court that it is exercising its right to object to dismissal of the Second Amended Complaint on the basis of the public disclosure bar for those claims accruing on or after March 23, 2010.<sup>1</sup>

On December 18, 2015, defendants filed their Motion to Dismiss Plaintiffs’ Second Amended Complaint. Defendants assert that the Second Amended Complaint must be dismissed because this Court has no subject matter jurisdiction under the Public Disclosure Bar. Select asserts that allegations were publicly disclosed and that the relators are not original sources.

The False Claims Act states in pertinent part:

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<sup>1</sup> The public disclosure bar of the FCA was amended on March 23, 2010. In *Graham County Soil and Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 283 n.1 (2010), the Supreme Court held that this amendment was not retroactive. Thus, it applies only to claims submitted on or after the effective date of the amendments.

The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed –(1) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. 31 U.S.C. § 3730(e)(4)(A) (2010) (emphasis added).

In sum, the statute provides that, if the United States objects, the court may not dismiss the action on the ground of public disclosure. The United States hereby notifies the Court that it is exercising its right to object to the dismissal of the action on this ground for those claims accruing on or after March 23, 2010. Accordingly, defendants' motion to dismiss on the ground of public disclosure bar should be denied for those claims.

The United States takes no position on the remaining grounds asserted for dismissal in Select's Motion to Dismiss.

Dated: February 1, 2015

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing upon the Parties herein, by filing a copy through the Court's CM/ECF system, which will deliver a copy to the following counsel of record on this 1st day of February, 2016.

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